

PROPOSED RESOLUTION

AGENDA ID#14723

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION W-5091
April 7, 2016

RESOLUTION

**(RES. W-5091) BEASORE MEADOWS WATER COMPANY.
ORDER AUTHORIZING BEASORE MEADOWS WATER COMPANY
(BMWC) TO SELL, AND BEASORE MUTUAL WATER COMPANY, A
NONPROFIT MUTUAL BENEFIT CORPORATION TO BUY BMWC.**

SUMMARY

By Advice Letter 22-W filed on December 10, 2015, Beasore Meadows Water Company (BMWC) requests to sell BMWC's water system and related assets to Beasore Mutual Water Company (Beasore Mutual), a nonprofit mutual benefit corporation, under the terms and conditions set forth in the December 8, 2015 Asset Purchase Agreement (Purchase Agreement) between BMWC and Beasore Mutual.

Pursuant to Public Utilities Code Sections 851-854 and Resolution ALJ-272, this Resolution grants BMWC the authority to sell and Beasore Mutual to buy BMWC, under the terms and conditions set forth in the December 8, 2015 Purchase Agreement between BMWC and Beasore Mutual. The transfer of operations of BMWC's water system is conditioned on Beasore Mutual obtaining the required domestic water supply permit by the State Water Resources Control Board for the operation of the water system under the new ownership.

This Resolution finds that the sale of BMWC meets the ratepayer indifference test,¹ the standard used by the Commission in the evaluation and approval of the sale and purchase of the Traver and Black Butte water utilities in Decisions (D.) 15-08-036 and D. 15-09-015, respectively.

¹ Under the ratepayer indifference test, any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the buyer.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

Most recently, the Commission applied this standard in its approval of the sale and purchase of Trinity Village Water Company by Trinity Village Mutual Water Company in Resolution W-5076.

BACKGROUND

Pursuant to Public Utilities Code (PU Code) Section 851, BMWC and Beasore Mutual (referred to in this resolution as “Applicants”) filed Advice Letter (AL) 22-W on December 10, 2015, requesting Commission authority to sell and to buy, respectively the BMWC.

BMWC was granted a Certificate of Public Convenience and Necessity to acquire ownership of and assume water utility service to the customers of BMWC by D. 83582, dated October 16, 1974.

BMWC provides seasonal flat rate water service to 75 customers during the period of May through October. BMWC’s service area is located approximately 20 miles from Bass Lake, in Madera County, California. BMWC’s source of water supply for the water system is from five springs, located one quarter (1/4) mile west of the storage tanks. These springs gravity feed into three storage tanks consisting of two 5,000 gallon polypropylene tanks and a 50,000 gallon cement block storage tank.

On December 8, 2015, Applicants entered into a Purchase Agreement for the residents of Beasore Meadows, which formed Beasore Mutual, to purchase BMWC. Applicants agreed on a purchase price of \$1.00 for BMWC’s water utility system and related assets, listed on Appendix A of this resolution, including transferrable interests in easements, water rights, rights of way and other rights and entitlements owned or possessed by, or deeded to BMWC; provided BMWC is not required to undertake any action to transfer interests to Beasore Mutual other than execution of documents necessary for the transfer.

NOTICE AND PROTEST

AL 22-W was served in accordance with General Order 96-B, on December 10, 2015, to adjacent utilities and persons on the general service list. No protests were received.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

DISCUSSION

Proposed transfers or encumbrance of utility property are reviewed under PU Code Sections 851-854, which prohibit the sale or transfer of control of a public utility without the advance approval of this Commission. Furthermore, review and approval of the Applicants' request for the sale and purchase of BMWC may be obtained through the AL process, since the transaction is valued at less than five million (\$5,000,000), is non-controversial, and does not require environmental review by the Commission as the Lead Agency under the California Environmental Quality Act (CEQA).² That process was established in Resolution ALJ-186 and extended and modified by Resolutions ALJ-202, ALJ-244, and ALJ-272.

The Commission has required a test of ratepayer indifference for evaluating sales and purchases of water utilities and for the buyer to demonstrate that the acquisition of the public utility yields a tangible benefit to the ratepayer.³ Using the ratepayer indifference test to evaluate the sale and purchase of BMWC, the following factors are evaluated: (1) service quality; (2) continuity of service; and (3) the impact of the purchase price on rate base. The Commission applied this standard of review in Del Oro Water Company's acquisition of Traver and Black Butte water utilities in D.15-08-036 and D.15-09-015, respectively. Most recently, the Commission applied this standard in its approval of the sale and purchase of Trinity Village Water Company (TVWC) by Trinity Village Mutual Water Company in Resolution W-5076.

The Division therefore applied this standard in its evaluation of the Applicants' request for the sale and purchase of BMWC as discussed below.

Service Quality and Continuity of Service

The Purchase Agreement provides for an orderly transition of BMWC's utility operations and service continuity. Under the terms of the Purchase Agreement, BMWC

² PU Code Section 851 allows transfers or encumbrance of utility property for qualified transactions valued at five million (\$5,000,000) or less to be processed through an AL filing; ALJ-244, pg. 2.

³ See D.05-04-047 at 9-11; D.04-01-066 at 8-11; and D.01-09-057 at 26-28.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

agrees to: 1) fully support Beasore Mutual in the transfer of utility operations by providing all documents and necessary information for the continued operation of the water system; 2) provide Beasore Mutual access to all equipment, fixtures, and other tangible assets necessary for the continued operation of BMWC's water system; and 3) serve as a consultant to Beasore Mutual on all matters related to the water system operations and utility service through October 31, 2016. Beasore Mutual is also retaining the services of a civil engineer to assist with the water system operations and permitting requirements.

Under the new ownership structure, customers will own equal shares of the utility assets as members of the mutual. Beasore Mutual members have agreed on an annual seasonal flat rate of \$317.00 for their water service, which is comparable to the \$356.47 seasonal flat rate currently charged by BMWC's under existing tariffs. Based on BMWC's annual operating costs of \$19,640 reported in its 2014 Annual Report, the proposed seasonal flat rate by Beasore Mutual will generate the necessary revenues to cover existing operating costs. Beasore Mutual also plans to use any remaining revenues for infrastructure improvements, to improve the water service and system's reliability.

Accordingly, the Division of Water and Audits (Division) finds that under the terms of the Purchase Agreement the Applicants have established the necessary measures to ensure that there is no disruption in the continuity of water service, or diminishing of service quality.

The Impact of the Purchase Price on rate base

Applicants agree on a purchase price of \$1.00 for the BMWC's utility assets listed in Appendix A of this resolution. The purchase price for BMWC does not have a material impact on rate base since Beasore Mutual is not using an established rate base amount to set its water service rates. Furthermore, a low purchase price for BMWC will allow Beasore Mutual to fully utilize the revenues it collects for the utility operations and infrastructure improvements.

The Division therefore finds the proposed sale of BMWC to Beasore Mutual meets the ratepayer indifference test. The purchase of BMWC by Beasore Mutual also provides a tangible benefit for the residents of Beasore Meadows since they will be paying a lower seasonal rate for their water service, and as members of the mutual they will have a greater say on how the utility is managed and operated.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

Californian Environmental Quality Act

The Commission in D. 15-08-036, D.15-09-015, and Res. W-5076 found in its evaluation of the sale and purchase of Traver, Black Butte, and Trinity Village water utilities that these transactions were exempt from CEQA because they only involved a proposed change in control and operation of existing water facilities, and did not involve new construction or changes in source supply.⁴ Applicants in AL 22-W are also not proposing any new construction or changes to source supply, and the transaction only involves a change in control and operation of existing water facilities. The Division therefore finds that CEQA review is not required for the approval of AL 22-W, consistent with the Commission's prior decisions.

Permit Requirement

Pursuant to the provisions of California Health and Safety Code (CH&S) Section 116525(a) the State Water Resources Control Board (SWRCB) requires any person or entity operating a public water system to obtain a domestic water supply permit (permit) to operate that water system. Beasore Mutual must therefore apply for and receive a permit from the SWRCB to operate the BMWC's water system.⁵ Beasore Mutual is currently in the process of applying for the permit. Accordingly, the transfer of operations of BMWC's water system to Beasore Mutual should therefore be conditioned on Beasore Mutual obtaining the required permit to operate the water system under the new ownership.

⁴ CEQA applies to a "project" or action "which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change . . . [and involves] the issuance to a person of a lease, permit, license, certificate, or entitlement for use by one or more public agencies." CEQA Guidelines, CALIFORNIA CODE OF REGULATIONS TITLE 14, Sections 15378(a) (2003)

⁵ Pursuant to CH&S Code Section 11630, the permitting authority and responsible is delegated to the local health department for community water systems with less than 200 service connections. Since BMWC has less than 200 service connections the permitting authority is delegated to the Madera County Environmental Health Division.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

Conclusion

Pursuant to PU Code Sections 851-854 and Resolution ALJ-272, the Division finds that the sale of BMWC to Beasore Mutual is reasonable, in the public interest, and does not warrant a more comprehensive review than would be provided through a formal PU Code Section 851 application. The Division therefore recommends approval of the Applicants' request with the conditions set forth in this resolution.

COMPLIANCE

BMWC has no outstanding compliance orders and the utility has been filing annual reports as required. BMWC is also in compliance with SWRCB's water quality standards for safe drinking water.

PU Code Section 433(a) requires public utilities to pay an annual public utilities reimbursement fee (annual fee) to the Commission. The Division confirmed with the Commission's fiscal office that BMWC is up-to-date with its annual fee payments.

UTILITY SAFETY

As noted in the Compliance section of this resolution, BMWC is in compliance with the SWRCB's water quality standards for safe drinking water. There are no other safety issues.

COMMENTS

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code Section 311 (g) (2), the otherwise 30-day period for public review and comment is being waived.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

FINDINGS

1. Beasore Meadows Water Company (BMWC) request by Advice Letter (AL) 22-W, to sell BMWC's water system and related assets to Beasore Mutual Water Company (Beasore Mutual) meets the ratepayer indifference test standard in that BMWC's customers will be unaffected in terms of service quality and continuity of service, and should be approved.
2. BMWC and Beasore Mutual agreed on a purchase price of \$1.00 for the BMWC water system and related assets, listed on Appendix A of this resolution.
3. The sale of BMWC does not have a material impact on the rate base of the utility, since Beasore Mutual will not be using an established rate base amount to set the water service rates it will change its members.
4. The California Environmental Quality Act (CEQA) does not apply as this Advice Letter only involves a change in control and operation of existing water facilities, and no new construction or proposed changes in the source of water supply.
5. The approval of AL 22-W is exempt from CEQA.
6. The transfer of operations of BMWC's water system to Beasore Mutual should be conditioned on Beasore Mutual obtaining the domestic water supply permit required by the State Water Resources Control Board to operate the water system under the new ownership.
7. BMCW's Certificate of Public Convenience and Necessity (CPCN) should be revoked after Beasore Mutual obtains the domestic water supply permit to operate the water system.
8. BMWC should file a Tier 1 AL with a copy of Beasore Mutual's domestic water supply permit to revoke its CPCN.

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

THEREFORE IT IS ORDERED THAT:

1. Pursuant to Public Utilities Code Sections 851-854 and Resolution ALJ-272, this Resolution grants authority to Beasore Meadows Water Company to sell and Beasore Mutual Water Company to buy Beasore Meadows Water Company, under the terms and conditions set forth in the December 8, 2015 Asset Purchase Agreement.
2. The transfer of operations of Beasore Meadows Water Company's water system to Beasore Mutual Water Company is conditioned on Beasore Mutual Water Company obtaining the required domestic water supply permit by State Water Resources Control Board to operate the water system under the new ownership.
3. Beasore Meadows Water Company shall file a Tier 1 Advice Letter with a copy of Beasore Mutual Water Company's domestic water supply permit in order for Beasore Meadows Water Company's Certificate of Public Convenience and Necessity to be revoked.
4. This resolution is effective today.

I certify that the forgoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on April 7, 2016; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

PROPOSED RESOLUTION

Resolution W-5091
DWA

April 7, 2016

APPENDIX A

Beasore Meadows Water Company
Advice Letter 22-W

Assets Included in Asset Purchase Agreement

1. Two 5,000 gallon polypropylene storage tanks;
2. One 43,000 gallons cement block water storage tank;
3. 5,800 feet of 2-inch water main;
4. 2,460 feet of 2 1/2-inch water main;
5. 900 feet of 4-inch water main;
6. 1,560 feet of 6-inch main; and
7. Miscellaneous parts and supplies;

END OF APPENDIX A

**BEASORE MEADOWS WATER COMPANY
ADVICE LETTER 20 SERVICE LIST**

Sheila Klierer
Beasore Meadows Water Company
P.O.Box 2245, Oakhurst, CA 93644
Shiela@sti.net

Madera County Environmental Health
200 W. 4th Street, Suite 3100
Madera, CA 93637
alma.larios@co.madera.ca.gov

Bob Headrick, President
Beasore Mutual Water Company
termitemfg@gmail.com

Michele Ramirez, Secretary
Beasore Mutual Water Company
msmike42@yahoo.com

Madera County LAFCO
200 West 4th St., Suite 3100
Madera, CA 93637